

Are prenups enforceable in India? 4 narrow pathways to legally bind pre-nuptial intent and protect wealth

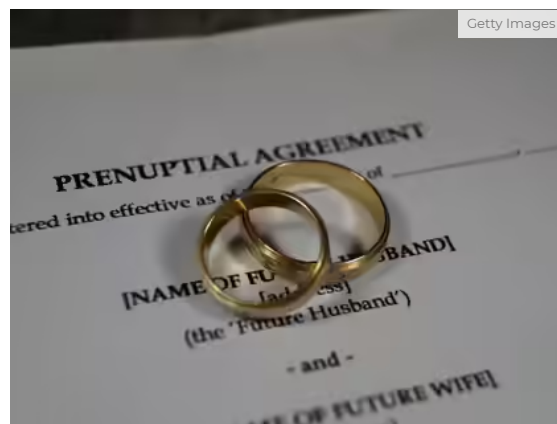
By Tanmay Patnaik, ET CONTRIBUTORS | Last Updated: Mar 02, 2026, 06:30:00 AM IST

Synopsis

Much of the uncertainty around pre-nuptial agreements, or prenups, stems from India's long-held view of marriage as a sacrament rather than a contract. Our judiciary has traditionally regarded marital rights and duties as governed by personal law rather than by private agreement.



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India's matrimonial landscape is undergoing seismic shifts. While the country's overall [divorce](#) rate is among the lowest globally, the picture in urban India is different. Over the past decade, marital breakdowns have risen sharply in metropolitan centres, driven by changing social norms, financial independence, and evolving expectations of partnership.

When marriages unravel, the economic fallout may be immense. For high-net-worth families, this often triggers complex disputes over wealth, inheritance, and long-term family assets. In India, courts apply broad discretionary principles to ascertain maintenance. In one case, the Supreme Court adopted 25% of the husband's net salary as a fair benchmark for monthly spousal support. Lump-sum [alimony](#) awards vary widely and depend on the court's discretion. Unlike community property regimes in some Western countries, Indian law does not grant either spouse an automatic 50% of marital assets. Alimony aims to help a dependent spouse maintain the standard of living enjoyed during the [marriage](#), not to equalise wealth—a principle the apex court has clearly affirmed.

The Western paradigm

In many Western countries, a pre-nuptial agreement, or 'prenup', has moved from being a social taboo to a practical financial tool. In the US, it is recognised across states provided it meets basic fairness standards, such as voluntary consent, full financial disclosure, and reasonable terms. The UK

accord significant weight to a prenup following the Radmacher v. Granatino (2010) ruling, even though it is not automatically binding. Australia treats it as a binding contract, while France, Germany, Japan and others have long required such an agreement to be notarised and registered.

The sacred marriage doctrine

In India, prenups are not explicitly recognised by personal laws, leading to an unpredictable judicial landscape. Much of this uncertainty stems from our nation's long-held view of marriage as a sacrament rather than a contract.

Our judiciary has traditionally regarded marital rights and duties as governed by personal law rather than by private agreement. Closely linked is the doctrine of public policy: courts have often ruled that agreements made in contemplation of a future separation or divorce are void, as they undermine the institution of marriage. This creates a paradox: marriages that do end in divorce are deemed so sacred that parties cannot plan for their dissolution. It's like prohibiting life insurance on the grounds that contemplating death shows insufficient commitment to living.

Yet, the judicial hostility is not absolute. A careful reading of Indian judicial precedent reveals narrow pathways to enforceability:

- **Property-linked arrangements:** In one case, the Calcutta High Court upheld an agreement before a wedding wherein the bride's father promised a house gift, applying the doctrine of part-performance (a legal principle under property law that means if one party acts on an agreement, the other cannot revoke it based on technicalities) and rejecting public policy objections because the agreement was not a 'marriage brokerage contract'. Where prenups involve valid transfers or clear consideration under property or contract principles, courts have shown greater willingness to uphold them as commercial arrangements rather than moral threats to marriage.
- **Post-nuptials:** In Sandhya Chatterjee v. Salil Chandra Chatterjee, the Calcutta High Court enforced a husband's written commitment regarding maintenance and separation, holding that public policy must be balanced against the public interest in respecting voluntary contracts between adults. Similarly, the Bombay High Court has upheld post-nuptial arrangements assigning specific property income for maintenance, provided they are fair, informed, and supported by consideration.

Why does the Court allow post-nuptials and not favour prenups outright? The latter is viewed with suspicion as it anticipates divorce before the marriage even starts. However, post-nuptials are often seen as a way to resolve an existing dispute or provide a peaceful way to live separately without a messy court battle. The court sees this as serving public interest because it avoids protracted litigation.

- **Muslim marriage contracts:** Lastly, Muslim marriages enjoy greater contractual latitude. Since Islamic law treats marriage as a contract, pre-nuptial terms relating to maintenance, residence, or protection from cruelty are more readily enforceable.

Why some Indians still go for prenups

For NRI families or those with global exposure, a well-executed Indian prenup may be potent. For entrepreneurs with global operations or family members abroad, it acts as an insurance policy, activating upon crossing borders. England considers foreign prenups persuasively. US states will examine Indian prenups through choice-of-law principles. Australia may recognise them if properly structured.

Within India, prenups carry persuasive and evidentiary weight. Though not automatically binding, they document intent and financial understanding at the outset of marriage. In complex divorces involving businesses, trusts, or multinational holdings, they often influence how courts assess asset ownership and maintenance. A carefully drafted prenup becomes admissible evidence, backing claims that certain assets were intended to remain separate or that maintenance expectations were mutually agreed upon.

Prenups also offer greater certainty around maintenance. While absolute waivers that are inconsistent with applicable law may be void or unenforceable, agreements can still pre-define maintenance structures, set caps or floors, and include sunset clauses. Contrary to popular belief, prenups often protect women by guaranteeing agreed support rather than forcing them into prolonged litigation.

Alternative strategies

- Separate property management is equally critical. Commingling funds or using joint resources to enhance inherited property can blur ownership lines. Clear documentation, separate accounts, and careful record-keeping help preserve asset character.
- Post-nuptial settlements, executed during amicable periods with independent advice, often carry more judicial weight than prenups.
- Discretionary family trusts are effective tools, especially when established well before marriage with independent trustees and irrevocable terms. Poorly timed or sham structures, however, invite judicial scepticism.
- Lastly, holding business ventures through companies, LLPs or family offices insulates operating assets from personal disputes.
- Layered shareholding through intermediate vehicles and robust shareholder pacts acts as a barrier to unreasonable spousal claims.

Conclusion

Prenups in India exist in legal twilight: neither fully enforceable nor entirely ineffective. Their value lies in evidencing intent, facilitating international recognition, and encouraging settlement instead of litigation. Pursuing a prenup may invite social discomfort or the label of being unromantic, but realism and romance need not be adversaries. As the saying goes, “the best thing to hold onto in life is each other”, and the second-best is “clarity”, documented when goodwill still exists.

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